



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.4234/2021

BETWEEN:

SUNIL KUMAR

... PETITIONER

(BY SRI HEMANTH KUMAR S.R., ADVOCATE)

AND:

1. STATE BY PERIYAPATANA POLICE STATION
MYSURU
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BANGALORE - 560 001
2. MANJU
S/O RAJAPPA
AGED ABOUT 28 YEARS
R/AT HITTANAHALLI VILLAGE
RAVANDURU HOBLI
PERIYAPATNA TALUK
MYSURU DISTRICT - 571 108
3. RAJAPPA
S/O LATE VEERAPPA
AGED ABOUT 53 YEARS

R/AT HITTANAHALLI VILLAGE
RAVANDURU HOBLI
PERIYAPATNA TALUK
MYSURU DISTRICT - 571 108

4. SHIVAMMA
W/O RAJAPPA
AGED ABOUT 50 YEARS
R/AT HITTANAHALLI VILLAGE
RAVANDURU HOBLI
PERIYAPATNA TALUK
MYSURU DISTRICT - 571 108

... RESPONDENTS

(BY SRI KRISHNA KUMAR K.K., HCGP FOR RESPONDENT/STATE
R2, R4- SERVED AND UNREPRESENTED
V/O ORDER DTD: 16.09.2021 NOTICE TO R3
IS HELD SUFFICIENT)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) R/W 482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER PASSED BY THE V ADDITIONAL SESSIONS JUDGE, MYSURU IN CRL.MISC.NO.464/2021 (SEC.438 OF CR.P.C.) DATED 23.03.2021 CRL.MISC.NO.576/2021 (SEC.438 OF CR.P.C.) DATED 05.04.2021 AND CRL.MISC.NO.706/2021 (SEC 439 OF CR.P.C.) DATED 17.04.2021 AND ETC.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCE THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 439(2) of Cr.P.C. praying to cancel the orders dated 23.03.2021, 05.04.2021 and 17.04.2021 passed in Crl.Misc.Nos.464/2021, 576/2021 and 706/2021, respectively, by the V Additional District and Sessions

Judge, Mysuru, for the offences punishable under Sections 498-A, 304-B r/w 34 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act.

2. Heard learned counsel for the petitioner and also learned HCGP appearing for the respondent – State. Respondent Nos.2 and 4 are served and unrepresented. Notice in respect respondent No.3 is held sufficient.

3. The factual matrix of the case of the prosecution is that the complainant is the younger brother of deceased – Sunitha, who had lodged a complaint stating that the marriage of the deceased took place with respondent No2./accused No.1 – Manju on 16.02.2020 and at the time of the marriage, they had given gold ornaments and cash of Rs.3,50,000/- and the expenses of the marriage were also borne by the complainant's family. Two months after the marriage, respondent No.2 / accused No.1 – Manju picked up quarrel with the deceased demanding six lakh rupees for construction of his house since the complainant's family had already supported the family of the Shruthi, elder sister of the deceased during construction of their house and in this regard Panchayath was also held. The mother

of the complainant sent the deceased back to the house of accused promising that the house of the accused would be completed and tiles would be laid. On account of failure of crops, complainant's family could not assist the accused financially. Hence, accused persons started subjecting the deceased to cruelty and even accused No.1 assaulted the deceased asking her to get her share in her father's property before the marriage of complainant takes place. On 14.02.2021 at about 11 A.M., the complainant received a phone call from his father that Sunitha was admitted in Mysuru Hospital with burn injuries. By the time complainant reached Ramanagar from Bengaluru his father informed him over phone that Sunitha is no more. When complainant came to Periyapatna from Mysuru his villagers told him that Sunitha's death was accidental and accordingly, a writing was given at Periyapatna Police Station that death of Sunitha was accidental. After funeral of the deceased was over, the complainant found that the deceased voice messages had come to mobile No.9380012311 belonging to Manikanta, a next door neighbour of the complainant from mobile No.7899287800, belonging to accused No.1 / husband of the deceased and the said voice messages of the deceased read

that, "If anything goes wrong to me, for that accused Manju, accused No.3 Shivamma and applicant i.e., Rajappa / accused No.2 would be responsible." When he came to know about these messages, which revealed the involvement of all the accused persons, he lodged a complaint and the case came to be registered as Crime No.41/2021. The police investigated the matter and filed charge sheet against the accused persons.

4. Accused Nos.2 and 3 have moved petitions in CrI.Misc.Nos.464/2021 and 576/2021, respectively, before the trial Court invoking Section 438 of Cr.P.C. for anticipatory bail and accused No.1 moved petition in CrI.Misc.No.706/2021 for regular bail under Section 439 of Cr.P.C. The trial Court granted bail in all the cases. While granting anticipatory bail in CrI.Misc.No.464/2021, the trial Court vide order dated 23.03.2021 came to the conclusion that none of the offences alleged against the applicant / accused No.2 is exclusively punishable with death or life imprisonment. It is only after the neighbour of the complainant revealing the fact that he has received voice messages of deceased Sunitha, the complainant has lodged complaint with the Periyapatna police. Whether the

said messages were really sent by the deceased Sunitha and whether the mobile phone belongs to Sunitha can be ascertained only at the time of trial. The incident took place on 14.02.2021 and the present complaint came to be lodged on 16.02.2021 at 10 p.m. and hence, apprehension of the prosecution that applicant / accused No.2 will abscond and tamper with the prosecution witnesses could very well be safeguarded by imposing stringent conditions. Similar order is passed in Cri.Misc.No.576/2021 vide order dated 05.04.2021 while granting bail to accused No.3. The trial Court while considering the bail petition in Cri.Mis.No.706/2021 filed by accused No.1, who is husband of the deceased, vide order dated 17.04.2021 held that the applicant / accused No.1 is in judicial custody since 18.02.2021 and apprehension of the prosecution that the applicant / accused No.1 will abscond and tamper with the prosecution witnesses could very well be safeguarded by imposing stringent conditions. If at all the deceased was subjected to mental and physical cruelty by the applicant and non-applicants in connection with dowry, the said fact would have been disclosed to the complainant and to his parents. Hence, enlarged the accused No.1 on bail by exercising

discretion under Section 439 of Cr.P.C. Hence, present petition is filed before this Court by the complainant.

5. The main contention of the petitioner's counsel before this Court is that the orders passed by the trial Court exercising discretion under Sections 438 and 439 of Cr.P.C. in CrI.Misc.Nos.464/2021, 576/2021 and 706/2021 is bad in law. Perverse orders are passed by the trial Court while exercising discretion under Section 438 as well as under Section 439 of Cr.P.C. FIR discloses that there is prima-facie case against the accused since deceased-Sunitha before her death had sent her voice messages from the mobile phone of her husband i.e., accused No.1 to one neighbour of the complainant and observation of the trial Court in this regard was that 'whether the said messages were really sent by the deceased Sunitha and whether that mobile phone belongs to Sunitha can be ascertained only at the time of trial'. Such being the facts of the case, the very observation that whether the mobile phone belongs to Sunitha has to be ascertained during trial, is an erroneous order. Learned counsel would also submit that from the voice messages of Sunitha-deceased, it is very much clear

that the Sunitha has stated that the accused persons may do anything to her life and if anything happens to her life, the accused persons are liable and not to leave them and board them to police jeep. This fact has also not been considered by the trial Court.

6. Even though there is prima-facie case against respondent Nos.2 to 4 regarding their involvement in commission of the offence regarding ill-treatment and harassment made to the deceased insisting her to bring additional dowry amount from her parental house and there was promise to give the amount and also panchayath was held to that effect, the trial Court failed to take notice of the ingredients of the complaint and offences punishable under Sections 498-A, 304-B r/w 34 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act. Even though detailed objection statement is filed by the Public Prosecutor, without considering the same, the very orders passed by the trial Court granting bail to the accused, is perverse and capricious. Hence, the orders require interference by this Court.

7. Per contra, learned counsel for the respondent -- State supports the contentions of the learned counsel for the petitioner / complainant and places copy of the objection statement filed by the prosecution before the trial Court as directed by this Court and on perusal of statement of objections at Para No.2, it is seen that specific averments are made in the objection statement that before the incident took place, deceased – Sunitha through the mobile phone of her husband had sent voice messages to the neighbour of the complainant that the respondent Nos.2 to 4 herein subjected her to cruelty and also sent messages stating that if anything happens to her life, all the accused are responsible. In spite of detailed statement of objections, the trial Court granted anticipatory bail and also regular bail in favour of accused Nos.2 to 4 within a span of two months and nothing has been referred to in the orders with regard to filing of the charge sheet or considering any charge sheet material. Hence, the learned HCGP also submits that the orders passed by the trial Court is perverse and capricious.

8. Pursuant to filing of this petition, this Court has issued notice to respondent Nos.2 to 4 / accused Nos.1 to 3. In spite of service of notice to respondent Nos.2 and 4, they did not choose to appear before this Court or engage a counsel. This Court vide order dated 16.09.2021 held the notice as sufficient in respect of respondent No.3.

9. Having heard the petitioner's counsel and HCGP appearing for the respondent – State and also taking note of the orders passed by the trial Court, a specific allegation is made in the complaint that before the death of victim, she had sent voice messages to the neighbour of the complainant that too from the mobile phone belonging to her husband stating that if anything happens to her life, all the accused are responsible, it is pertinent to note that the trial Court while exercising powers under Section 438 Cr.P.C. in both cases in CrI.Mis.Nos.464/2021 and 576/2021 vide orders dated 23.03.2021 and 05.04.2021, made a callous observation that whether the said messages were really sent by the deceased to the neighbour of the complainant and whether the mobile phone belongs to Sunitha, can be ascertained only at the time of trial. Even though the

fact that the said mobile phone belongs to the husband of the deceased i.e., accused No.1, is clearly stated in the objection statement of learned Public Prosecutor in para No.2 before the trial Court and also in the complaint it is specifically stated that the said phone belongs to accused No.1, without looking into the records, the trial Court has made observation, which is incorrect. It is the very specific case of the complainant that the messages were sent from the mobile phone of the husband of the deceased i.e., accused No.1 and not deceased-Sunitha. Even though heinous offence under Sections 498-A, 304-B r/w 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act were invoked, the trial Court has exercised discretion under Section 438 Cr.P.C. by granting bail. It is also important to note that the death of the victim is on account of burn injuries. In the complaint there is specific averments that the messages were sent on 14.02.2021 i.e., on the day when the incident took place and that the same came to the knowledge of the complainant later and before completion of investigation, the trial Court has invoked powers under Section 438 Cr.P.C. and granted bail to accused in two cases and without even waiting for the investigation period, came to the conclusion that the said messages' truthfulness

could be considered during trial and this conclusion is arrived even before the investigation.

10. The trial Court in CrI.Misc.No.706/2021 while granting regular bail by invoking Section 439 Cr.P.C. has made the very same observation, which is erroneous. When such being the facts, the trial Court in a capricious manner came to the conclusion that the present complaint came to be lodged on 16.02.2021 and also observation has been made that the accused No.1 is in judicial custody since 18.02.2021. Within a span of two months of filing of the complaint and when the case was under investigation, the very approach of the trial Court in passing the order on 17.04.2021 granting bail to accused No.1, who is alleged of committing heinous offence of taking away the life of a lady in a matrimonial home and that too after coming to know about by the voice messages being sent by the victim before her death that too through the mobile of accused No.1 and the same ought to have been investigated but, the trial Court has lost sight of the heinous offence, that the lady, who was married in the year 2020 has lost her life within one year of her marriage that too by burn injuries and the cruelty meted out

to her in the matrimonial home and cause of death also due to burn injuries, hence, the orders passed by the trial Court is nothing but a perverse and capricious orders.

11. This Court also would like to refer to the judgment of the Apex Court in the case of **RAMESH BHAVAN RATHOD VS VISHANBHAI HIRABHAI MAKWANA (KOLI) AND ANOTHER** reported in **(2021) 6 SCC 230**, wherein it is held that the Court has to look into the seriousness and gravity of offences committed and severity of punishment in the event of conviction, failure of High Court to consider while granting bail and in the absence of reasons also the order of granting bail in the present case held perverse and set aside the order of granting bail. It is further observed that necessity of recording reasons for grant or denial of bail though the Court considering bail application does not need to launch into detailed evaluation of facts on merits since criminal trial is still to take place, yet court granting bail cannot be oblivious of its duty to apply judicial mind and to record reasons, brief as they may be for the purpose of deciding whether or not to grant bail and further observed that mandatory duty of the court to record reasons when granting

bail and grant of bail is a matter involving exercise of judicial discretion and judicial discretion in granting or refusing bail as in case of any other discretion which is vested in court as judicial institution, is not unstructured and duty to record reasons is significant safeguard which ensures that discretion which is entrusted to court is exercised in judicious manner and recording of reasons in judicial order ensures that thought process underlying order is subject to scrutiny and that it meets objective standards of reason and justice thus, bail order which does not contain reasons for prima facie concluding that bail should be granted is liable to be set aside for non-application of mind.

12. In the case on hand also, I have already pointed out that the reasons assigned by the trial Court in exercising discretion under Section 438 of Cr.P.C. as well as under Section 439 of Cr.P.C., is a factual error committed that to when the complainant has specifically stated that the deceased sent voice messages from the mobile phone of her husband to the neighbour of the complainant. An observation is made that whether the said messages were really sent by the deceased-

Sunitha and whether that mobile phone belongs to Sunitha can be ascertained only at the time of the trial. It is not the case of the prosecution that the said mobile belongs to deceased – Sunitha and the same belongs to her husband and the said message also sent through the mobile of her husband to the neighbour of the complainant. But, while exercising powers under Sections 438 and 439 Cr.P.C., the trial Court assigned the reason that whether the said messages were really sent by the deceased-Sunitha and whether that mobile phone belongs to Sunitha can be ascertained only at the time of the trial and even there was no investigation at that time and allegation is very clear that when six lakh rupees was demanded for construction of the house, panchayath was held and promised to pay the amount to complete the construction, trial Court ought not to have exercised discretion under Sections 438 as well as 439 of Cr.P.C prior to conclusion of the investigation itself, when a heinous offence of taking away the life of the victim, who was married just one year prior to the incident, wherein the victim herself had sent messages from the mobile phone of her husband - accused No.1 to the neighbour of the complainant before her death, which amounts to a dying declaration. The

trial Court ought to have waited till the completion of the investigation and if no material, would have exercised discretion.

13. The trial Court ought not to have exercised discretion and passed a perverse and capricious orders. Since the orders are perverse and capricious, it requires interference by this Court.

14. It is appropriate to send the copy of this order to the learned trial Judge, who exercised discretionary powers under Sections 438 and 439 of Cr.P.C. in a heinous offence of taking away the life of the victim, who was married one year prior to the incident and prior to her death, she had sent voice messages to the neighbour of the complainant. That being the case, the trial Court lost sight of the judicious thought process entrusted to the Presiding Officer as observed by the Apex Court in the judgment referred supra and failed to exercise judicial discretion and failed to take note of complaint allegations particularly dowry harassment and about the panchayath held before her death regarding additional dowry harassment, hence, it is appropriate to direct the Registry to post the Judicial Officer for

training in the Judicial Academy to make endeavour to learn judicial discretion, in the interest of institution and to protect the interest of seekers of justice, while granting the bail.

15. In view of the observations made above, I pass the following:

ORDER

- (i) The petition is ***allowed***. Consequently, the orders dated 23.03.2021, 05.04.2021 and 17.04.2021 passed in CrI.Misc.Nos.464/2021, 576/2021 and 706/2021, respectively, by the trial Court, are hereby set aside and bail granted is cancelled.
- (ii) Trial Court is directed to take the respondent Nos.2 to 4 / accused Nos.1 to 3 to custody forthwith under Section 439(2) of Cr.P.C. since this Court cancelled the bail.
- (iii) Registry is directed to seek appropriate orders from the Hon'ble Chief Justice to post the concerned Judicial Officer to the Judicial

Academy for training with regard to applying judicious thought process while exercising judicial discretion before granting bail in a heinous offences as observed by the Apex Court in the judgment referred to supra.

- (iv) The Registry is directed to send a copy of this order to the Presiding Officer to make endeavour to learn exercising of judicial discretion.

**Sd/-
JUDGE**

SV